

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.

Plaintiff,

vs.

STOCKX LLC,

Defendants.

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) No.

) 1:22-cv-00983-VEC

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The videotaped deposition of

KARI KAMMEL

taken before JO ANN LOSOYA, CSR, RPR, CRR, pursuant
to the provisions to the taking of depositions at
444 West Lake Street, Chicago, Illinois commencing
at 9:45 a.m. on July 18, 2023.

1 **PRESENT:**

2
3 DLA PIPER LLP
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18 Appeared on behalf of Defendants.

19 **ALSO PRESENT:**

20 KIM VAN VOORHIS,
21 Nike, Inc.

22 **VIDEOGRAPHER:** Milo Savich
23 **STENOGRAPHICALLY REPORTED BY:**
24 JO ANN LOSOYA, CSR, RPR, CRR
25 **LICENSE #:** 084-002437

1 publications, I believe.

2 A. It is the sixth one down that I did
3 jointly with Jay Kennedy who is the former assistant
4 director of the A-CAPP Center, Daniel Cermak and
5 Minelli Manoukian who were two of my law students at
6 the time.

7 Q. I see. This is the responsibility for
8 the sale of trademark counterfeits online published
9 in the AIPLA Quarterly Journal?

10 A. Yes, that's correct.

11 Q. Do you have any formal education related
12 to counterfeiting?

13 A. I don't, no.

14 Q. Do you have any formal education related
15 to the sneaker industry?

16 A. I don't.

17 Q. Do you have any formal education related
18 to online marketplaces?

19 A. I do not, no.

20 Q. Have you ever worked in brand protection
21 for a company?

22 A. I have not, no.

23 Q. Have you ever worked in brand protection
24 for a resale marketplace?

25 A. I have not.

1 Q. Have you ever worked for a resale
2 marketplace?

3 A. No.

4 Q. How do you define resale marketplace?
5 This is not a trick question. I just want to make
6 sure that we're not speaking past each other.

7 A. So I would define it as a marketplace
8 where goods are sold after they've already been
9 purchased once.

10 Q. Have you ever worked for a firm that
11 investigates counterfeit activity?

12 A. No.

13 Q. Have you ever personally conducted
14 investigations into counterfeit activity on behalf
15 of a brand?

16 A. No.

17 Q. Have you ever personally conducted
18 investigations into counterfeit activity on behalf
19 of a resale marketplace?

20 A. No.

21 Q. Have you ever designed a company's brand
22 protection program?

23 A. I have not designed, but I've consulted
24 on it in my role at the Center.

25 Q. Have you ever designed a company's

1 referring to when you're saying "two-sided
2 platform"?

3 Q. Yeah.

4 When I say "two-sided platform," what
5 do you think I'm referring to? Do you have an
6 understanding of what I'm referring to? How would
7 you define it?

8 A. So I have not heard that term
9 specifically before.

10 Q. Have you ever heard the term two-sided
11 marketplace?

12 A. No.

13 Q. Are you an expert in the design of a
14 resale marketplace?

15 A. No.

16 Q. Are you an expert in the operation of a
17 resale marketplace?

18 A. No.

19 Q. Are you an expert in platform economics?

20 A. No.

21 Q. Are you an expert in price formation?

22 A. No.

23 Q. When you say you have consulted with
24 companies on the design of their brand protection
25 and anti-counterfeiting program, what do you mean by

1 advisory board?

2 A. Not since that time where it was briefly
3 mentioned so...

4 Q. Have you studied or worked with
5 sneakerheads before?

6 A. We had one student who went through our
7 program as a masters in criminology, who was a self
8 declared sneakerhead and I believe he actually wrote
9 a short -- I think it was part of his 'masters
10 thesis assists, which wasn't formally part of
11 A-CAPP, but he was writing about counterfeiting. So
12 I have had a few conversations with him over the
13 years, but not really specific to -- to
14 sneakerheads.

15 Q. What did you learn from him about
16 sneakerheads?

17 A. Just that he's very passionate about it.
18 Like a lot of -- like a lot of other industries, I
19 mean we see a lot of passionate what we would say
20 fans across industries depending on the product
21 lines and what's out there.

22 So I would say my discussions with
23 him sort of fell along those lines.

24 Q. Did you learn anything else from him
25 about being a sneakerhead?

1 A. No.

2 Q. Have you learned any other thing about
3 sneakerheads at any point during your work?

4 A. During my work at the Center?

5 Q. Sure.

6 A. No.

7 Q. How about other than at your work at the
8 Center?

9 A. Only from the materials I reviewed.

10 Q. In the context of this case?

11 A. Yes.

12 Q. Okay. Have you ever studied advertising
13 or marketing?

14 A. I have not, no.

15 Q. So you are not an expert in advertising
16 or marketing, correct?

17 A. That's correct.

18 Q. Have you ever conducted a consumer
19 perception survey?

20 A. I have not, but my research team, as I
21 mentioned before, is conducting one as we speak.

22 Q. Other than that, do you have any
23 experience with conducting a consumer perception
24 survey?

25 A. No.

1 Q. Are you an expert in consumer perception
2 surveys?

3 A. No.

4 Q. Have you ever conducted any consumer
5 research at all?

6 A. No.

7 Q. Are you an expert in conducting consumer
8 research?

9 A. No.

10 Q. Okay. We went over the publications
11 listed on the fourth page of your CV. Does that
12 list all of your publications?

13 A. There are some on Page 5 as well that
14 goes onto the back side, and to the best of my
15 recollection, yes, they're all here.

16 Q. Okay. And does your CV accurately list
17 all of the courses you have taught and your
18 presentations and interviews other than, of course,
19 the one that the June presentation you mentioned
20 earlier?

21 A. To the best of my recollection, yes, my
22 goal is to get all of them on here.

23 Q. Have you ever taught any classes
24 specifically on counterfeiting in the footwear
25 industry?

1 it's now out of their control.

2 Q. Let's look at page 8 of your report. In
3 the first paragraph of Section 4 -- actually, I
4 think it's the second paragraph of Section 4, you
5 say that e-commerce and social media platforms have
6 created the perfect environment for counterfeiters
7 since these platforms usually prioritize the speed
8 of getting products to consumers, satisfaction of
9 sellers, and profit for the platform instead of
10 safety and protection of consumers and their
11 purchasers.

12 You didn't do any survey of
13 e-commerce commerce platform practices in connection
14 with your work on this case, correct?

15 A. That's correct.

16 Q. And you don't explain in your report
17 which e-commerce platforms you investigated in
18 support of your opinion that these platforms usually
19 prioritize in the way you describe in your report?

20 A. So this is a statement that's partially
21 based on my experience.

22 Q. My question was, you don't explain in
23 your report which e-commerce platforms you're
24 talking about, correct?

25 MS. DUVDEVANI: Objection.

1 extent that speed is often touted or not only speed
2 but getting a seller up to sell as quickly as
3 possible with as few barriers as possible, and then
4 on the back end, we see some of the consequences of
5 that, which is that counterfeit goods are
6 proliferating on e-commerce sites of all kinds and
7 that's continuing to grow and expand. It's not
8 getting better.

9 It's, in fact, getting worse to the
10 point where it's become a national security issue
11 that's being addressed by the White House, by DHS,
12 by the FBI, by DOJ, and a lot of other federal
13 agencies because it's rising to such a level that
14 it's harming the US economy, it's harming US brands,
15 it's harming US consumers.

16 Q. What research have you done specifically
17 to look at this other than talk to individuals from
18 IPR, DHS, or other brands?

19 A. So this statement is based on my
20 experience, not a specific research paper.

21 Q. Your experience to talking to IPR, DHS,
22 and other brands?

23 A. My experience in my role as the director
24 of the A-CAPP Center and all of the activities I
25 have conduct there, yes.

1 rebuttal report, which is any of these items that
2 were suspected to be potentially counterfeit by the
3 consumers they were told that these are
4 imperfections that must have been by Nike's
5 manufacturing team, even though they have no
6 evidence of what Nike's manufacturing processes are
7 or any quality issues around that, which means that
8 the consumers are left thinking that Nike has a
9 quality issue when, in fact, it's most likely a
10 potential counterfeit.

11 Q. Did you investigate whether StockX has
12 ever suspended sellers from its platform?

13 A. I did not do a separate investigation of
14 that.

15 Q. Okay. You testified earlier that you're
16 not a consumer perception expert, correct?

17 A. I am not.

18 Q. Do you have any experience analyzing what
19 messages consumers might takeaway from specific
20 language on websites?

21 A. I don't, but my colleagues at A-CAPP
22 Center do specialize in that.

23 Q. Did you conduct any study in this case of
24 what messages, if any, consumers took away from the
25 language on StockX's website?

1 A. I was not asked to.

2 Q. Are you aware of any study that Nike
3 conducted regarding what messages, if any, consumers
4 took away from the language on StockX's website?

5 A. I'm not aware of any.

6 Q. When did you first learn of StockX?

7 A. The company in general?

8 Q. Yeah.

9 A. Probably a few years ago.

10 Q. Did you ever study or analyze StockX
11 before this case came up?

12 A. No.

13 Q. Prior to your work on this case, did you
14 ever look at the anti-counterfeiting efforts or the
15 brand protection efforts that StockX takes?

16 A. No. And I don't recall ever seeing them
17 at any of the conferences where e-commerce platforms
18 are most likely talking about that. So and no, I
19 did not.

20 Q. What did you know about StockX prior to
21 this case?

22 A. So I knew that they sold essentially
23 high-end sneakers and that was mostly from, as I
24 mentioned, one of our former students, who was very
25 interested in that.

1 they might exclude some counterfeits. It's
2 certainly possible.

3 Q. Your opinion is not that they're not
4 trying to exclude counterfeits but that they can't
5 guarantee products are 100 percent authentic?

6 MS. DUVDEVANI: Objection.

7 BY THE WITNESS:

8 A. I'm not giving an opinion on whether
9 they're trying or not, but their claim that they can
10 authenticate can't -- I mean, it's not possible
11 because they cannot authenticate any products, but
12 they may be able to exclude some obvious counterfeit
13 in the same way that, you know, other platforms
14 exclude counterfeit. Some that view items, some
15 that don't view items.

16 I mean, the whole point of this -- of
17 the laws that are being passed and everything going
18 on right now with best practices is to try to keep
19 platforms as safe as possible, but when a platform
20 is claiming that they can authenticate in the way
21 that only the brand can and to 100 percent accuracy
22 or 99 point, forget what it was, almost 100 percent
23 accuracy, that's not possible.

24 Q. What if -- you also take issue with
25 StockX's -- well, withdraw that.

1 Q. You testified earlier that you're not
2 offering an opinion as to platform economics in this
3 case, correct?

4 A. That is correct.

5 Q. Are you aware that Dr. Tucker describes
6 coring as the ability of two-sided platforms in
7 general and marketplaces in particular to actively
8 manage and maintain buyer and seller interactions to
9 ensure their quality?

10 A. So that is what it says on 22, correct.

11 Q. In reaching your opinion that StockX does
12 not appear to be engaging in coring, what
13 methodology did you apply?

14 A. So in regards to this section, it was in
15 the context of the sale of counterfeit goods and
16 protections that platforms take or should take
17 according to best practices so that was based on my
18 experience in the field of brand protection and
19 anti-counterfeiting.

20 Q. So in reaching your opinion that StockX
21 does not appear to be engaging in coring, you
22 consider the context of the sale of counterfeit
23 goods and protections that platforms take or should
24 take according to best practices; is that accurate?

25 A. According to best practices for

1 Airbnb or an art auction.

2 Q. Can you say one way or the other whether
3 vetting sellers is a form of coring?

4 MS. DUVDEVANI: Objection.

5 BY THE WITNESS:

6 A. Again, I would have to have more context
7 and I am not an expert on general coring.

8 Q. Do you know what StockX does to vet
9 sellers?

10 A. So it is my understanding that they have
11 them fill out basic information with a credit card
12 and make sure that the credit card is verified, but
13 I don't believe there's any vetting that I know of
14 that I have seen that's more in-depth for that --
15 for that purpose until -- until maybe they become
16 a -- I'll get the right term, but a frequent seller,
17 a seller who is selling multiple -- multiple shoes,
18 high volume seller.

19 Q. At that point, high volume sellers are
20 vetted using some other method?

21 A. I don't know if they're -- I didn't see a
22 separate vetting process, but they are certainly
23 identified within the documents that I saw.

24 Q. Flipping back to Exhibit 1, your
25 affirmative report, if you could go to page 27,

1 or overt, whether that's a technology or something
2 else, this is something intentionally put into the
3 product where the packaging that's obvious that
4 someone can look at to say, okay, this is part of
5 our authentication process, but regardless, any
6 of -- any of the items or technologies that are put
7 into an authentication program have to be -- have to
8 be put together by the brand intentionally and,
9 oftentimes, depending on the products.

10 So depending on the product,
11 depending on the industry, there may be different
12 technologies used for different product lines, for
13 example, or even, again, if it's a smaller company
14 or a start-up, they may not have money to invest in
15 technology at that point, so maybe they will rely
16 initially, at least, only on one or two of these.
17 So these vary. But again, it's something that the
18 IP rights holder has to decide which ones they are
19 going to use in their authentication process and
20 who -- who within the brand has access and who, if
21 anyone, outside of the brand would have access to
22 those tools in order to authenticate a product.

23 Q. So if you look at the next page, you have
24 this blue hexagon with the different triangles,
25 that's page 22.

1 A. Yep.

2 Q. And is this a diagram of the six
3 technologies or methods that you just mentioned?

4 A. Yes.

5 Q. Okay. So can you just explain to me --
6 just tell me which fits into these categories?

7 A. Sorry. Which fits into what categories?

8 Q. Let's go through the hexagon. I just
9 want to make sure I understand what you're talking
10 about in each of these triangles.

11 A. Okay.

12 Q. So let's start with covert technology.
13 Is this what you mentioned when you said they -- the
14 brand can put something obvious in the two that you
15 can see that will tell you if it's counterfeit or
16 not?

17 A. Under covert?

18 Q. Yes, covert technology.

19 A. No. Covert is something that can't be
20 seen by the naked eye.

21 Q. That was my fault. I get it. It's been
22 a long day. Okay. So let me clean this up.

23 What are you referring as covert
24 technology?

25 A. So covert technology, and I reference

1 this, I believe, I think this is footnote 73 too, so
2 this is something that is not recognizable or
3 perceptible using human senses so it usually
4 requires a specialized tool or highly specialized
5 knowledge.

6 Q. Okay. [REDACTED]
[REDACTED]
[REDACTED]

9 Q. And then to the right of that, it says
10 overt tool available to the public. What do you
11 mean by that?

12 A. So an overt tool is something that some
13 brands have used, something that is, for example,
14 obvious in their mark or obvious in a product. I'm
15 thinking -- I can't remember exactly which brand
16 this is but they have a mark that if you turn it
17 sideways, you can see a different letter and they
18 share with their consumers this is something that
19 you can look at. That also means counterfeiters can
20 see it too, but it is used, usually in conjunction
21 with another -- with another -- with another set of
22 tools, but oftentimes that is one of the things that
23 someone could decide to use, or if they choose, to
24 give that to the public something that they might
25 use that anyone could look at and tell.

1

Q. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4

Q. Next for continuing, there's a triangle that says covert?

5

6

A. That's an error and a typo. I have that on there twice actually.

7

8

Q. Okay. So what's supposed to be there?

9

A. So I believe -- so it should match the five that I refer to on the other page there.

10

11

Q. Well, there's six here.

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A. Covert, overt, semi-covert, forensic, and digital and then -- so the six that are supposed to be in the image are the six that I talk about on page 20. The point of the graphic was to say that if a brand is using all six of those, no one can authenticate it unless they use all six of those technologies. So if a brand picks four types of technologies to use in their authentication, different people may have different access to those tools, depending on who they determine, but the final point of authentication can't be made unless all four of those are checked by whoever would have access to all four of those tools because I mean, some -- some -- depending on what -- what the

1 product is may use multiple tools. So this was
2 meant simply as a -- as a diagram to explain those
3 five plus the human experience.

4 Q. Okay. I'm just going to look at page 20
5 if that's the correct list. We talked about overt.
6 We talked about covert, which those are numbers 1
7 and 3. The second is semi-covert. What do you mean
8 by that?

9 A. Sure. So that's a term actually that we
10 refer to in -- in the work of our Center, which
11 is -- which is something that is usually in between
12 overt and covert, which is something that often
13 might involve something that isn't very obvious when
14 you look at it but maybe there's, for example, a
15 rudimentary tool that might be needed to
16 authenticate whatever that is.

17 Q. Can you give me an example?

18 A. So, yeah, perhaps -- perhaps a brand, I
19 don't know, it tells someone -- this is totally
20 hypothetical but this is the idea, that, you know,
21 if you have our product and you put it in hot water,
22 you know, it may dissolve or something to that
23 effect. So it's something that isn't necessarily
24 obvious at the first moment, but if someone was to
25 do something with it, not necessarily with the

1 MS. DUVDEVANI: Are you almost at a good
2 breaking point?

3 MS. BANNIGAN: I have a couple of more
4 questions on this one and then we can break.

5 MS. DUVDEVANI: Okay.

6 BY MS. BANNIGAN:

7 Q. Okay. So, looking -- I'm going to look
8 at the language next to the hexagon and maybe
9 this -- maybe or -- I don't know actually. Let me
10 just ask my question.

11 You say, "authenticating. However,
12 authenticating only one of the six does not mean
13 that the product is authentic. All must be
14 authenticated in order to truly verify whether a
15 product is genuine or authorized."

16 And so by that, did you mean all that
17 the brand chooses to use must be authenticated?
18 Because I'll confess I read that to mean all six of
19 these need to be used when I first -- when I read
20 that.

21 A. It's all that the brand chooses to
22 authenticate or chooses to put into their program.
23 So I had put on the next page, on page 23, this is
24 just a sample from the ISO report about control.
25 Control means access, but what -- what different

1 technologies are used. So here they give a couple
2 of examples of overt, covert, and forensic analysis.

3 So if a brand was to choose those
4 three authentication elements or whatever the
5 technologies are that with those authentication
6 elements, even if someone could use a covert tool
7 such as, for example, US Customs and say we got a
8 flag on this covert tool, you would still need to
9 use all of the elements that the brand has
10 determined need to be used in order to authenticate
11 the good.

12 Q. Okay. Did you take these graphics from
13 somewhere, this hexagon graphic? Where did it come
14 from?

15 A. No, I created it.

16 Q. You created it for this report?

17 A. Correct.

18 MS. BANNIGAN: Okay. We can take a break
19 now if that works for you?

20 MS. DUVDEVANI: Yep.

21 THE VIDEOGRAPHER: The time is 4:58 p.m.
22 This is the end of Media Unit 6 and we're going off
23 the video record.

24 (Whereupon, a break in the
25 proceedings was taken.)